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March 8, 2023

## VIA CM/ECF

Hon. Paul A. Engelmayer  
United States District Court  
Southern District of New York  
500 Pearl Street  
New York, New York 10007

Re: *Brito v. Harlem Center for Nursing and Rehabilitation*  
Case No. 1:22-cv-09937-PAE

Dear Judge Engelmayer:

The parties jointly submit this letter to update the Court on the status of the appeals in *Leroy v. Hume*, Nos. 21-2158, 21-2159 (cons.), *Rivera-Zayas v. Our Lady of Consolation Geriatric Care Center*, 21-2164, and *Solomon v. St. Joseph Hospital*, No. 21-2729.

On March 7, 2023, the Second Circuit issued a decision in *Solomon*, ruling that (1) plaintiff's state-law claims were not completely preempted by the PREP Act because they did not fall within the scope of the PREP Act's federal cause of action for willful misconduct; (2) there was no jurisdiction under the federal-officer removal statute because defendants therein did not "act under" a federal officer; and (3) plaintiff's claims did not "arise under" federal law.

The Second Circuit has ordered that supplemental briefing addressing the effect, if any, of the *Solomon* decision on the *Leroy* and *Rivera-Zayas* appeals be submitted by March 21, 2023. The parties expect a decision thereafter in short order.

We thank the Court for its continued attention to this matter.

Sincerely,

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TO: (via CM/ECF)  
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